

REMARKS

Status of Claims:

Claims 1-6, 8-11, 17, 19, and 23-33 are rejected. Claims 1-6, 8-11, 17, 19, and 23-33 remain pending.

103 Over Haber

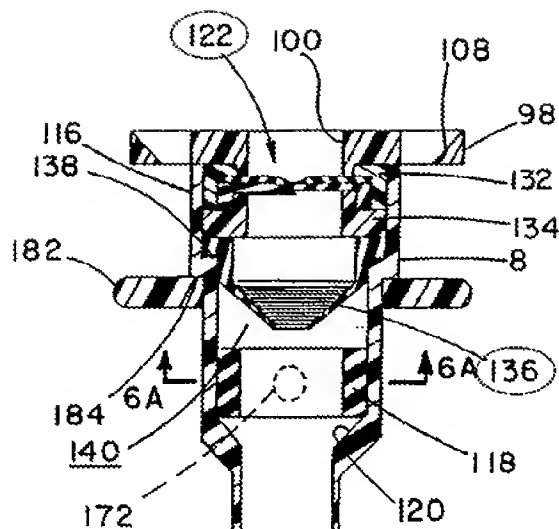
The Office Action of March 10, 2009 rejected Claims 1, 6, 8-9, 17, 23-37 and 29-32 as obvious over Haber (5,385,552). This rejection is improper for at least the following reasons.

The Examiner states that the applicant's argument made in response to the previous rejection is merely based on an "intended use", and that if the prior art structure is capable of performing the intended use, then the prior art meets the claim. (See page 6 of Examiner's March 10, 2009 action.)

The Examiner then goes on to say that Applicant has argued that one skilled in the art would not modify the proximal seal of Haber to become an instrument seal, and that, according to the Examiner:

"However, the modification is only to make the proximal seal 122 maintain a gas tight closure, and to form a tighter seal that would prevent fluid from escaping out of the top end of the cannula whether an instrument is present in the cannula or not, as maintained above."

One of the Haber Figures is set forth below to help explain how the Examiner's position is incorrect.



Haber's own abstract teaches the following:

"....at least three interleaved elastomeric sealing elements (124) which seal the path when an object, such as an obturator barrel (14), *is not positioned along the path*. The gas sealing assembly also includes a flexible, elastic, conical element (136) with a hole (158) at its tip and raised edges or rings (164) along its inner surface (154) for sealing the path *when an object is positioned along the path*." (Italics added)

So, there would be no motivation to modify the seal elements 124 to provide a seal around an object, as suggested by the Examiner, because Haber teaches using a conical element 136 that has a hole in its tip and provides a seal when an object is positioned in the path of Haber's trocar.

As set forth below, Haber fails to teach or suggest at least the following elements/limitations recited in Claims 1, 9, 17, and 25, including elements and/or limitations that are not merely “intended use” as the Examiner suggests:

Regarding Claim 1:

Haber does not teach or suggest a plurality of separate semicircular seal segments compressed between first and second rings and adapted to seal against instruments positioned through the seal. Instead, as noted above in Haber’s abstract, Haber discloses a single conical element (136) is used for sealing the path when an object is positioned along the path, and Haber discloses the elements (124) seal the path when an object, such as an obturator barrel (14), *is not positioned along the path. One would not modify Haber as suggested by the Examiner where the modification is contrary to the very teachings of Haber.*

Regarding Claim 9:

Haber does not teach a plurality of layered elastomeric members arranged about an aperture in an alternating over and under pattern, nor such elements cooperatively sealing against instruments positioned through the aperture.

Haber’s own disclosure states the elements 124 seal the path when no instrument is positioned along the path, and so the elements 124 of Haber would not be arranged about an aperture, because such an aperture would provide a direct leak path, and would prevent sealing when no instrument is positioned along the path. The Examiner’s position that Haber teaches elements 124 are positioned around an aperture is clearly incorrect. Further, one would not modify Haber to have such a feature because such a modification would result in the intended function of the elements 124 to be inoperative!

Regarding Claim 17:

Haber doesn't teach or suggest a plurality of semicircular elastomeric members circumscribing an aperture in an interwoven pattern, nor such members cooperating to seal against objects positioned within the aperture. As noted above, Haber's own disclosure state the elements 124 provide a seal in the path when no instrument is positioned in the path. This clearly is different from Claim 17, and if one were to somehow modify Haber to meet all the elements of claim 17, the very purpose of Haber's elements 124 would be destroyed!

Claim 25:

Haber does not teach or suggest a plurality of resilient seal segments circumscribing an aperture. Also, as noted above, one would not modify Haber's elements 124 to circumscribe an aperture, because to do so would destroy the very purpose of Haber's elements 124! Having the elements 124 circumscribe an aperture would permit a leak path through the aperture when no instrument is in the path of Haber's trocar, and Haber specifically requires that the elements 124 provide a seal when there is not instrument in the trocar.

Again, as Haber's Abstract explains:

"...at least three interleaved elastomeric sealing elements (124) which seal the path when an object, such as an obturator barrel (14), *is not positioned along the path*. Italics added.

It is respectfully urged that the Examiner's position is not only mischaracterizes Haber, but also that Haber teaches away from the very characterization and suggested modification the Examiner proposes. Accordingly, all the rejections should be withdrawn.

Since all of the rejections are premised on Haber, and as discussed above the rejection based on Haber is misplaced, all the claims should be in a condition for allowance.

Copending Applications

The Examiner should note the following copending United States patent applications:

Application

10/687502

10/943215

10/943214

10/943221

10/943222

10/943220

11/217673

10/943218

10/943213

The Examiner is encouraged to review each of these file wrappers, including the pending claims, all art of record, and any rejections. Details of these cases are available through PAIR and the Office's databases. No representation is made or intended that the foregoing cases are material to patentability of the present claims, or that the foregoing list is comprehensive.

Conclusion

Based on the foregoing, all of the pending claims are in a condition for allowance. Applicants traverse all rejections and request reconsideration, and Applicants request an early notice of allowability.

Respectfully submitted,

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